IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7529 OF 2007

1. M/s. Kewal Cargo Carriers
Pvt. Ltd. and anr. ..Petitioners

Vs.

Shri Kanhaya Lal Gupta ..Respondent

Mr. Sanjay D. Thokade for petitioners.
Mrs. Neeta Karnik for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : December 18, 2007.

P.C.:

1. Heard Mr. Thokade the learned counsel for the petitioners.

2. Rule. Mrs. Karnik waives service for the respondent. By consent of the parties, the petition is taken up for final hearing forthwith.

3. The respondent had approached the Labour Court by filing a recovery application under Section 33C(2)

of the Industrial Disputes Act, 1947 for the recovery of an amount of Rs.86,500/-. The said application came to be registered as Application (IDA) No. 261 of 2005. The present petitioners appeared before the Labour Court and opposed the application by filing their Written Statement. The applicant himself entered the witness box, whereas on behalf of the Company Shri Rajendra Singh, who was working as a Manager at the relevant time, was examined as a witness. The Company questioned the maintainability of the application on the ground that the claim made was disputed and it was not a claim payable under any statute or under any contract and during his entire tenure of 12 years, at no point of time the applicant had raised any grievance regarding non payment of house rent allowance, leave travel allowance, arrears of annual increment for 7 years, ex-gratia payment for 7 years etc. The details of the statement of claim indicated that the following recoveries were claimed by the applicant:-

1.Gratuity for 12 years Rs.16,200/-

2.Retrenchment compensation

for 12 years	Rs.16,200/-
3.House rent allowance for 7 years.	Rs. 3,500/-
4.Leave Travelling Allowance for 7 years	Rs. 3,500/-
5.Arrears of Annual Increment for 7 years	Rs. 7,000/-
6.Ex-gratia payment for 7 years	Rs.28,000/-
7.Leave wages for 1 1/2 months	Rs. 4,000/-
8.Three months notice pay	Rs. 8,100/-

3. The learned Judge of the Labour Court by the impugned order dated 27/8/2007 held that the payment of gratuity of Rs.16,200/- could not be entertained as the remedy for the same was available under the Payment of Gratuity Act, 1972. However, the learned Judge of was pleased to allow all other claims from Sr.Nos.2 to 8 as mentioned hereinabove.

4. The applicant while in the witness box stated that he had joined as a Peon in March, 1985 and he was removed from service by the Company from 13/11/1997 without any notice. He further alleged that the Company had not paid his legal dues which included

gratuity, retrenchment compensation, house rent allowance, leave travelling allowance, arrears of annual increment for 7 years, ex-gratia payment for 7 years, leave wages for 1 and 1/2 months and three months notice pay. In his cross examination he admitted that he had not made any representation or complaint to any authority alleging that opponent no.2 had obtained his signature on blank papers. He also stated that opponent had threatened him of filing a police complaint if he would file an application for recovery of legal dues and, therefore, he did not file an application as early as possible. On the other hand, the company's witness admitted that the applicant was working in the company as a Peon and he was drawing the monthly salary of Rs.1700/-. It was further stated that the applicant submitted his resignation on 13/11/1997 (Exh.C-8) and the same was accepted and the applicant was relieved. However, on acceptance of his resignation, he was paid an amount of Rs.18,000/- towards his legal dues.

5. It is clear from the record that the applicant did not challenge his termination of service nor did

he claim that he was illegally retrenched from service. Though he had put in about 12 years of service, he did not raise any grievance regarding the non payment or short payment of house rent allowance, leave travelling allowance, arrears of annual increment or ex-gratia payment etc. The learned Judge of the Labour Court did not have before him any details of the rate of payment of house rent allowance, leave travelling allowance, the amount of annual increment or the percentage of ex-gratia amount paid to other workmen during the seven years period that he claimed. In the absence of these details, it was patently erroneous on the part of the Labour Court to accept the figures quoted by the applicant and more so when there was no dispute raised about the termination or otherwise, the claim for retrenchment compensation could not have been entertained unless better particulars were provided by the applicant on the basis of oral and documentary evidence. The figures quoted in the application made by the workman have been accepted by the Labour Court without any further details about the rate of house rent allowance, leave travelling allowance etc.

6. Hence the impugned order is unsustainable and it would be appropriate that the parties are directed to go before the Labour Court so as to give an opportunity to the applicant to provide better particulars by way of additional evidence.

7. Hence, the petition is allowed and the impugned order dated 27/8/2007 is hereby quashed and set aside. Application (IDA) No. 261 of 2005 is restored to the file of the 2nd Labour Court at Mumbai for a de novo enquiry and it is directed that the same shall be heard and decided afresh as expeditiously as possible and preferably within a period of six months from the receipt of writ from this court. Both the parties are at liberty to adduce an additional evidence (oral as well as documentary). Liberty to amend the application and the amendment must be carried out before 15/1/2008. The parties to appear before the 2nd Labour Court on 7/1/2008. Rule is made absolute accordingly.

(B.H. Marlapalle,J.)